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No. 89-1579

In The

Supreme Court of the United States

October Term, 1989

MARY CELESTE GRIFFING,

Petitioner,

v.

THE CHILDREN'S HOME SOCIETY OF FLORIDA, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The District Court Of Appeal Of Florida, Third District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, in a Section 1983 action brought by a woman whose liberty interest in the care and custody of her four children was extinguished in 1960 and 1961 by juvenile court orders reciting that she was given due notice of the proceedings, the not-for-profit, state licensed agency to whom the children were entrusted for foster care and/or adoption was entitled to summary judgment based upon immunity derived from these juvenile court orders, where in each instance the signature of the juvenile court judge executing the orders has been authenticated and where passage of time precludes either direct or collateral attack of the orders.

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STATEMENT OF THE CASE AND FACTS

Petitioner was convicted in October 1959 for impersonating an officer in the United States Navy and was sentenced to three months imprisonment. Her Amended Complaint alleges that she placed her four children in the care of a babysitter prior to her incarceration. (R. 14-29)[1]

Contrary to the allegations of Petitioner's Complaint, court orders from the Juvenile Court of Monroe County, Florida, reflect that Petitioner's four children had become wards of the state on September 16, 1959 and were then committed to the care of the Division of Children's Services State Welfare. (R. 87-94) Thereafter, the court ordered that the children be placed with The Children's Home Society for care and adoption. The two younger children were received by The Children's Home Society on January 19, 1960 and placed in foster homes. (R. 87, 90) Welfare personnel initially placed the two older children with another service, American Children's Home, although The Children's Home Society was ultimately given authority by court order to place them for adoption. (R. 93, 94, 143) The Children's Home Society is a not-for-profit corporation which was incorporated under the laws of the State of Florida in 1902. It is duly licensed as a child placing agency.

The assertions of Petitioner's Complaint (that she had no knowledge of her children's whereabouts for approximately twenty-six years and was never contacted throughout the process for their commitment and adoption) are further refuted by the discovery in the trial

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[1] The symbol "R." refers to the record below.

court. The two juvenile court Orders of Commitment to Child Caring Agency dated April 7, 1960, (which relate to the commitment of the two older children, Debra Michelle Anderson and Wayne Andrew Goldman, each state that these children have been

> wards of Court since 9/16/59; committed to care of Division of Children's Services, State Welfare since then. Father was duly searched for but not found. Mother has failed to present a plan for care of child, has served sentence in Federal Prison and is now returned. It is deemed in the best interest of child that [they] be placed with The Children's Home Society for care leading to permanent commitment for subsequent adoption and it appearing to the court that it is for the best interest of said child that she be removed from the custody and control of her parent(s) the said Carl Wayne Anderson & Mrs. Jody Anderson alias Mrs. Judith Goldman and from the home and surroundings in which she is now situated, and the The Children's Home Society of Florida is duly licensed by the Florida State Board of Public Welfare as a Child Caring Agency under the provisions of Section 409.06 Florida Statutes, 1941, and is willing to receive said child. (R. 87, 90)

Before announcing these findings, the juvenile court orders first recite that all persons entitled to notice of the hearing were duly notified.

The orders of permanent commitment for these two children, both of which are dated August 29, 1961, again reference the earlier orders and as to each child the court then decreed

> It is therefore ordered, adjudged and decreed that the said dependent child is hereby permanently committed to the care and custody of the

> said The Children's Home Society of Florida for subsequent adoption.
>
> It is further ordered, adjudged and decreed that the said dependent child shall forthwith become the ward of, and the person of the said child said be subject to the guardianship of The Children's Home Society of Florida, and said Society is hereby given the authority to place the said child in a family home for the purpose of adoption, and may become a party to any proceeding for the legal adoption of the said dependent child, and may consent thereto, and by its representative or attorney may appear in any court where such proceeding is pending, and participate therein as the guardian of said dependent child.
>
> It is further ordered, adjudged and decreed that the natural parent, or parents, of the said dependent child, and the legal guardian, if such there is, other than the said The Children's Home Society of Florida, and all other persons, are hereby jointly and severally permanently deprived of all rights to such child, all of which said rights are hereby declared permanently forfeited. (R. 89, 92, 93, 94)

Once again, the juvenile court orders establish that Petitioner has proper notice of this proceeding because each order states:

> Legal father having been duly searched for and not found; . . . dependent child and Judith Jean Donnelly aka Anderson aka Goldman mother having been before the Court and the Court finding that all persons entitled to notice of this hearing have been duly notified, or that the parent or parents of said child have duly surrendered said child . . . (R. 89, 92)

Not only do the juvenile court orders reflect that Petitioner was notified of the commitment proceedings for these two children, the records also establish notification to her prior to the permanent commitment of the two younger children, Wayne Andrew Goldman and Adrienne Celeste Goldman, in orders dated August 29, 1961 and April 7, 1960. These orders of permanent commitment both state:

> Natural mother . . . and dependent child having been before the court and the court finding that all persons entitled to notice of this hearing having been duly notified . . . (R. 93, 94)

The signature on these various court orders was authenticated and its validity has never been disputed. (R. 145-146c) Copies of these court orders were part of the permanent records of Respondent, The Children's Home Society. Nothing in the orders, or any evidence submitted in the trial court, reflects that any representative of The Children's Home Society participated or was present at any of the commitment hearings or in any way influenced the court in issuance of the orders for committing these children for adoption. After completion of discovery establishing the authenticity of these various orders which directed Respondent's actions, Respondent moved for summary judgment. The trial court granted this motion which was affirmed, *per curiam*, by the Florida Third District Court of Appeal. No appeal was permitted from the *per curiam* decision to the Florida Supreme Court. Some twenty-six years after the children were permanently committed by juvenile court order to The Children's Home Society and were placed for adoption, Petitioner filed suit asserting that her children had been

wrongfully taken. The sole support for her complaint was the affidavit of Roberta Pettie, Child Welfare Supervisor, which disputed the contents of these orders which recited she was present at the commitment hearings. Because these orders were more than one year old, their contents were no longer subject to challenge.

REASON THE PETITION SHOULD BE DENIED

1. Petitioner has not presented any evidence to challenge the summary final judgment that there was no Section 1983 violation by Respondent, The Children's Home Society.

A plaintiff may not defeat a defendant's properly supported motion for summary final judgment in the absence of any evidence to support the allegations of the complaint. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Griffing's position in this case is fatally flawed by her failure to recognize this settled law.

Griffing has cited a number of cases identifying what facts one must allege to state a claim for an action "under color of state law" which are not dispositive of the instant case. The instant case is not concerned with the dismissal of a complaint or whether it stated a cause of action, rather, the petition challenges the propriety of a summary judgment entered by the trial court where the evidence uniformly refuted all material factual allegations of the complaint. Because of this critical factual distinction, Griffing's reliance on the cases of *Dennis v. Sparks*, 449

U.S. 24 (1980) and *Duchesne v. Sugarman*, 566 F.2d 817 (2nd Cir. 1977) is misplaced.

The evidence in the trial court established that the juvenile court had issued orders regarding the temporary and permanent commitment of these children and that the Division of Children's Services, State Welfare Department, was responsible for their taking. The children were not delivered to the care of The Children's Home Society until months after they had been taken by the state and declared to be wards of the state. The juvenile court orders further recite that Petitioner had notice of all the juvenile court proceedings. For this reason, the cases of *Armstrong v. Manzo*, 380 U.S. 545 (1965) (failure to give mother notice of adoption proceedings violates due process), *Duchesne v. Sugarman, supra* (custody must be based on parental consent or court order) and *May v. Anderson*, 345 U.S. 528 (1953) (mother could not be denied custody where the court lacked personal jurisdiction over the mother and she did not appear or take part in the proceeding) are factually distinguishable and do not control.

Even if one assumes, *arguendo*, that The Children's Home Society had participated in the commitment of the four children, the facts established that such actions were privileged and that Respondent was entitled to summary final judgment in its favor because "even defendants who violate constitutional rights enjoy a qualified immunity that protects them from liability for damages unless it is further demonstrated that their conduct was unreasonable under the applicable standard." *Davis v. Scherer*, 468 U.S. 183, 190 (1984). The evidence before the court established that Petitioner had been given notice of all commitment proceedings. The bare contrary allegations in

Petitioner's complaint are insufficient to avoid summary judgment in the face of this evidence. *Celotex Corp. v. Catrett, Anderson v. Liberty Lobby, Inc., supra.*

2. Respondent, Children's Home Society, acted reasonably and pursuant to the directives of juvenile court orders and therefore has no liability to Petitioner.

The record affirmatively establishes that the orders of the juvenile court, which were entered more than two decades prior to the instant litigation, were the basis of all actions by The Children's Home Society. These orders established the legal foundation for the commitment of these children. §39.03, Fla. Stat. (1951). The orders are not subject to dispute or attack because more than one year has elapsed since their entry. §63.182, Fla. Stat. (1973).

The factual recitations in those orders unequivocally establish that Petitioner's children became wards of the court on September 16, 1959 and only later were they committed by the juvenile court to the care of Children's Services, State Welfare Department. Two children were initially placed with The American Children's Home, which has never been a party to this suit. Petitioner's children were therefore already wards of the state at the time of the 1960 and 1961 hearings where their commitment or adoption was authorized. These orders plainly state that The Children's Home Society was not responsible for "taking" these children in the first instance and that all actions of the Respondent were at the specific direction of the juvenile court.

These orders further establish that Petitioner had notice of all proceedings. Neither Petitioner, nor Roberta Pettie (the welfare supervisor on the case) can now contest these recitations. The suggestion of "irregularities" in these orders as asserted by Ms. Pettie is insufficient to create questions of fact or liability as to The Children's Home Society, particularly where there is no indication in the record that The Children's Home Society was present or a participant at any of these hearings. The passage of time stands as a bar to asserting any irregularity or procedural defect in any of the proceedings and precludes either direct or collateral attack. §63.182, Fla. Stat. (1973).

Further, the unchallenged evidence unequivocally establishes that these juvenile court orders were signed by a judge of the juvenile court. The affidavit of a handwriting expert, whose opinion was undisputed, states that the signature on the orders is in fact that of the then juvenile court Judge Eva Warner Gibson. Each of the six orders relating to the temporary and permanent commitment of Petitioner's four children was individually examined as part of this handwriting expert's analysis.

Even if the recitation of notice to Petitioner in the various juvenile court orders could be attacked, Petitioner still cannot surmount the fact that The Children's Home Society was not responsible for notifying her of any of these hearings nor can she avoid the fact that all actions of The Children's Home Society were, according to the statements of the juvenile court, done at the direction of the court pursuant to its orders after the children had already been taken into custody.

Petitioner asserts that a claim was stated because The Children's Home Society did not give her information regarding the location of her children. This overlooks the fact that the Respondent was statutorily precluded from releasing such information. 1955 Fla. Laws, c. 29703, §1 (current version at §63.162, Fla. Stat. (1989).

Petitioner has further suggested that the fact she could not locate the relevant juvenile court files in 1987, more than twenty-five years after the juvenile court ordered the children's permanent commitment, should have prevented The Children's Home Society from relying on copies of those juvenile court orders which it received in 1960 and 1961. This position is without merit. There is no requirement that The Children's Home Society must confirm the existence of a file in the courthouse before it can rely upon an order which is duly signed by a sitting judge of the juvenile court. Further, juvenile court records are not maintained as public records and are not open to inspection by the public. 1951 Fla. Laws, c. 26880 §3 (current version §39.411 (Fla. Stat. (1988)). Her further suggestion that some significance should be attached to the lack of certification on these juvenile court orders is similarly groundless. As court records, the contents of these orders may be judicially noted and certification was unnecessary. §90.202(6) Fla. Stat. (1978).

CONCLUSION

For the reasons set forth herein, it is respectfully submitted that Celeste Griffing's Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

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